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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,540	07/02/2003	Randy D. Baxter	RSW920030049US2	3593
43168	7590	11/15/2007		
MARCIA L. DOUBET LAW FIRM PO BOX 422859 KISSIMMEE, FL 34742			EXAMINER KARDOS, NEIL R	
			ART UNIT 4172	PAPER NUMBER
			NOTIFICATION DATE 11/15/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mld@mindspring.com

## Office Action Summary

**Application No.**

10/612,540

**Applicant(s)**

BAXTER ET AL.

**Examiner**

Neil R. Kardos

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This is a non-final first Office action on the merits. Currently, claims 1-25 are pending.

#### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because it is not signed by all the inventors.

#### ***Claim Objections***

Claims 15, 20, and 21 are objected to because of the following informalities:

Typographical errors.

Claim 15 reads “comprising step of,” which should be corrected to read “comprising steps of.”

Claims 20 and 21 read “comprising the step of used the generated assessment score,” which should be corrected to read “comprising the step of using the generated assessment score.”

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the product development team." There is insufficient antecedent basis for this limitation in the claim. There is no product development team in claim 8 or claim 1 for this limitation to reference.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7, 14-17, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. pre-grant publication number 2003/0216955 to Miller et al ("Miller") in view of U.S. patent number 6,219,654 to Ruffin ("Ruffin").

As per claims 1 and 14-17, Miller discloses a method comprising steps of:

determining a plurality of criteria that are important to a target market, and at least one attribute to be used for measuring each of the criteria (see figures 2-5; paragraph 35, lines 1-12; paragraph 58; see paragraph 37, lines 10-14 for examples of attributes); specifying objective measurements for each of the attributes (see paragraph 46, lines 1-3); and

conducting an evaluation of an IT product, further comprising steps of:

inspecting a representation of the IT product, with reference to selected ones of the attributes (see paragraph 35, lines 1-12; paragraph 44; paragraph 58); assigning attribute values to the selected attributes, according to how the IT product compares to the specified objective measurements (see paragraph 46, lines 3-5); generating a list of recommended actions, the list having an entry for each of the selected attributes for which the assigned attribute value falls below a threshold, each of the entries providing at least one suggestion for improving the assigned attribute value (see paragraph 37, lines 6-10, wherein direction is provided for product design improvements; see figure 4 and paragraphs 47-48, wherein a chart is used to recommend the attributes that should be improved when their values fall below customer expectations; see figure 6 and paragraph 51, lines 6-8, wherein actions that should be taken are identified).

Miller does not disclose generating an assessment score, for the IT product, from the assigned attribute values.

Ruffin teaches weighing and combining scores relating to customer objectives for IT products in order to create a total weighted score (see column 15, line 58 through column 16, line 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Ruffin to combine the assigned attribute values of Miller in order to generate an assessment score. One of ordinary skill in the art would have been motivated to do so in order to rank products (see Ruffin, column 16, lines 17-18).

As per claim 2, Miller discloses a method wherein the list of recommended actions is generated automatically, responsive to the assigned attribute values that fall below the threshold (see paragraphs 30-31).

As per claim 3, Miller discloses a method further comprising the steps of:  
prioritizing each of the attributes in view of its importance to the target market (see figures 3-5; paragraph 45, lines 13-16);

Miller does not disclose assigning weights to the attributes according to the prioritizations and using the weights when generating the assessment score.

Ruffin teaches weighing and combining scores relating to customer objectives for IT products in order to create a total weighted score (see column 15, line 58 through column 16, line 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Ruffin to combine the prioritized attribute values of Miller in order to weigh attributes and generate an assessment score. One of ordinary skill in the art would have been motivated to do so in order to rank products (see Ruffin, column 16, lines 17-18).

As per claim 4, Miller discloses a method wherein the assessment score is programmatically generated (see paragraphs 30-31).

As per claim 7, Miller discloses a method wherein a product team developing the IT product provides input for the evaluation by answering questions on a questionnaire that reflects the attributes (see paragraph 36, lines 1-18, wherein information is received via a questionnaire

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from the client; see paragraph 32, where the client is defined as a party who manufactures products).

As per claim 22, Miller discloses a system comprising:

a plurality of criteria that are determined to be important to the target market, and at least one attribute that may be used for measuring each of the criteria, wherein the attributes are prioritized in view of their importance to the target market (see figures 2-5; paragraph 35, lines 1-12; paragraph 45, lines 13-16; paragraph 58);

objective measurements that are specified for each of the attributes, wherein the measurements are weighted according to the prioritizations (see paragraph 46, lines 1-3; paragraph 48, lines 11-15); and

means for conducting an evaluation of the IT product, further comprising:

means for inspecting a representation of the IT product, with reference to selected ones of the attributes (see paragraph 35, lines 1-12; paragraph 44; paragraph 58);

means for assigning attribute values to the selected attributes, according to how the IT product compares to the specified objective measurements (see paragraph 46, lines 3-5);

means for generating a list of recommended actions, the list having an entry for each of the selected attributes for which the assigned attribute value falls below a predetermined threshold (see paragraph 37, lines 6-10; figure 4 and paragraphs 47-48; figure 6 and paragraph 51, lines 6-8).

Miller does not disclose means for generating an assessment score, for the IT product, from the weighted measurements of the assigned attribute values.

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Ruffin teaches weighing and combining scores relating to customer objectives for IT products in order to create a total weighted score (see column 15, line 58 through column 16, line 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use teachings of Ruffin to combine the assigned attribute values of Miller in order to generate an assessment score. One of ordinary skill in the art would have been motivated to do so in order to rank products (see Ruffin, column 16, lines 17-18).

As per claim 23, Miller discloses a computer program product on a computer-readable medium comprising computer-readable program code means for carrying out the steps of:

recording results of conducting an evaluation of an IT product, wherein the evaluation

further comprises (see figures 3-5, wherein the results are recorded on a graph):

inspecting a representation of the IT product, with reference to selected ones of a

plurality of attributes, wherein the attributes are defined to measure a plurality of

criteria that are important to the target market (see paragraph 35, lines 1-12; paragraph 44; paragraph 58); and

assigning attribute values to the selected attributes, according to how the IT product

compares to objective measurements which have been specified for each of the

attributes (see paragraph 46, lines 3-5).

Miller does not disclose using the recorded results to generate an assessment score, for the IT product, from the assigned attribute values, wherein the generated assessment score thereby indicates how well the product meets the criteria that are important to the target market.



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Ruffin teaches weighing and combining scores relating to customer objectives for IT products in order to create a total weighted score (see column 15, line 58 through column 16, line 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use teachings of Ruffin to combine the assigned attribute values of Miller in order to generate an assessment score. One of ordinary skill in the art would have been motivated to do so in order to rank products (see Ruffin, column 16, lines 17-18).

As per claim 24, Miller discloses a method comprising steps of:

conducting an evaluation of an IT product, further comprising the steps of:

inspecting a representation of the IT product, with reference to selected ones of a

plurality of attributes, wherein the attributes are defined to measure a plurality of

criteria that are important to the target market (see paragraph 35, lines 1-12; paragraph 44; paragraph 58); and

assigning attribute values to the selected attributes, according to how the IT product

compares to objective measurements which have been specified for each of the attributes (see paragraph 46, lines 1-3);

recording results of conducting the evaluation (see figures 3-5, where the results are recorded on a graph).

Miller does not disclose using the recorded results to generate an assessment score, for the IT product, from the assigned attribute values, wherein the generated assessment score thereby indicates how well the product meets the criteria that are important to the target market.

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Ruffin teaches weighing and combining scores relating to customer objectives for IT products in order to create a total weighted score (see column 15, line 58 through column 16, line 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Ruffin to combine the assigned attribute values of Miller in order to generate an assessment score. One of ordinary skill in the art would have been motivated to do so in order to rank products (see Ruffin, column 16, lines 17-18).

Claims 5-6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller and Ruffin in view of U.S. pre-grant publication number 2004/0068456 to Korisch ("Korisch").

As per claim 5, Miller and Ruffin do not disclose wherein the step of conducting an evaluation is repeated at a plurality of plan checkpoints used in developing the product.

Korisch teaches repeatedly checking to determine if a product meets predetermined specifications in order for that product to proceed to the next step (see figure 4, item 29; paragraph 154, lines 19-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Korisch with the inventions of Miller and Ruffin. One of ordinary skill in the art would have been motivated to do so in order to meet product requirements (see Korisch, paragraph 154, lines 22-24).

As per claims 6 and 20, Miller and Ruffin do not disclose wherein successful completion of each of the plan checkpoints requires the assessment score to exceed a predetermined threshold.

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Korisch teaches repeatedly checking to determine if a product meets predetermined specifications in order for that product to proceed to the next step (see figure 4, item 29; paragraph 154, lines 19-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Korisch with the inventions of Miller and Ruffin. One of ordinary skill in the art would have been motivated to do so in order to meet product requirements (see Korisch, paragraph 154, lines 22-24).

Claims 8, 10, 13, 18-19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller and Ruffin in view of U.S. patent number 7,103,561 to Sarkisian, et al ("Sarkisian").

As per claim 8, Miller and Ruffin do not disclose a method wherein the assigned attribute values, the assessment score, and the list of recommended actions are recorded in a workbook.

Sarkisian teaches recording scores and recommendations in a workbook (see figures 4A-4D).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Sarkisian with the inventions of Miller and Ruffin. One of ordinary skill in the art would have been motivated to do so in order to recall the information at a later time.

As per claim 10, Miller discloses a method wherein a product team developing the product provides input for the evaluation by answering questions on a questionnaire that reflects the attributes (see paragraph 36, lines 1-18, wherein information is received via a questionnaire

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from the client; see paragraph 32, where the client is defined as a party who manufactures products).

Miller and Ruffin do not disclose wherein the answers to the questions, the assigned attribute values, the assessment score, and the list of recommended actions are recorded in an electronic workbook

Sarkisian teaches recording scores and recommendations in a workbook (see figures 5A-5C, wherein general definitions to attributes are given; figures 4A-4D, which specifically provide how the product meets or fails to meet the definitions).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Sarkisian with the inventions of Miller and Ruffin. One of ordinary skill in the art would have been motivated to do so in order to recall the information at a later time.

As per claims 13 and 21, Miller and Ruffin do not disclose a method comprising the step of assigning a special designation to the product if and only if the assessment score exceeds a predefined threshold.

Sarkisian teaches using competing products as benchmarks to determine different product designations (see column 6, lines 23-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Sarkisian with the inventions of Miller and Ruffin. One of ordinary skill in the art would have been motivated to do so in order to differentiate products with various scores (see Sarkisian, column 6, lines 23-50).

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As per claim 18, Miller and Ruffin do not disclose a method wherein the specified objective measurements further comprise textual descriptions to be used in the step of assigning attribute values.

Sarkisian teaches wherein the specified objective measurements further comprise textual descriptions to be used in the step of assigning attribute values (see figures 5A-5C; column 7, lines 48-63).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Sarkisian with the inventions of Miller and Ruffin. One of ordinary skill in the art would have been motivated to do so in order to in order to provide guidance in scoring the attributes (see Sarkisian, column 7, lines 48-63).

As per claim 19, Miller and Ruffin do not disclose a method wherein the textual descriptions identify guidelines for assigning the attribute values using a multi-point scale.

Sarkisian teaches wherein the textual descriptions identify guidelines for assigning the attribute values using a multi-point scale (see figures 5A-5C; column 7, lines 48-63).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Sarkisian with the inventions of Miller and Ruffin. One of ordinary skill in the art would have been motivated to do so in order to in order to provide guidance in scoring the attributes (see Sarkisian, column 7, lines 48-63).

Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, Ruffin, and Sarkisian in view of Official Notice.

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As per claim 9, Sarkisian discloses recording scores and recommendations in a workbook (see figures 4A-4D).

Miller, Ruffin, and Sarkisian do not teach wherein the workbook is an electronic workbook.

Official Notice is taken that it was well known in the computer arts at the time the invention was made to store information in electronic workbooks (see Microsoft Excel).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use well-known computer data methods to store the workbooks of Sarkisian in an electronic format. One of ordinary skill in the art would have been motivated to do so in order to store the information on a computer.

As per claim 12, Miller, Ruffin, and Sarkisian do not disclose a method comprising the step of providing the assessment workbook, following the evaluation, to the product development team.

Official Notice is taken that it was well known in the product development arts at the time the invention was made to provide the individuals responsible for product development with information that would aid in product development.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine well known practices with the invention of Miller and Ruffin. One of ordinary skill in the art would have been motivated to do so in order to apply the assessment scores and recommendations in practice.

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Claims 11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller and Ruffin in view of Official Notice.

As per claim 11, Miller and Ruffin do not disclose a method comprising the steps of providing the assigned attribute values, the assessment score, and the list of recommended actions to a product team developing the IT product

Official Notice is taken that it was well known in the product development arts at the time the invention was made to provide the individuals responsible for product development with information that would aid in product development such as product scores and recommended courses of action.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine well known practices with the invention of Miller and Ruffin. One of ordinary skill in the art would have been motivated to do so in order to apply the assessment scores and recommendations in practice.

As per claim 25, Miller and Ruffin do not disclose a method further comprising the step of charging a fee for carrying out one or more of the conducting, recording, and using steps.

Official Notice is taken that it was well known in the business arts at the time the invention was made to charge clients for services performed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine well known business methods with the invention of Miller and Ruffin. One of ordinary skill in the art would have been motivated to do so in order to make a profit.

***Double Patenting***

Claims 1-25 of this application conflict with claims 1-20 and 23-25 of application number 11/244510, claims 1 and 2 of application numbers 10/439570, 11/244789, and 11/244644, claim 10 of application number 10/439573, and claims 1-24 of application number 11/244608. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.



Claims 1-23 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-20 and 23-25 of copending Application No. 11/244510. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 14-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 10/439570. Although the conflicting claims are not identical, they are not patentably distinct from each other because the IT portfolio products of the copending application anticipate the IT products of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 14 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 10 of copending Application No. 10/439573. Although the conflicting claims are not identical, they are not patentably distinct from each other because the “criteria for measuring autonomic computing characteristics” of the copending application anticipate the “criteria” of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 11/244789. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 2 of the copending application anticipate claim 1 of the present application.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-23 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No.

11/244608. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-24 of the copending application anticipate claims 1-23 of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 14 and 23 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, and 12 of copending Application No. 11/244644. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1, 2, and 12 of the copending application anticipate claims 14 and 23 of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Additional Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The magazine article by Patricia Lawlis, et al, entitled "A Formal Process for Evaluating COTS Software Products," published in IEEE's *Computer: Innovative Technology for Computing Professionals*, Volume 34, Issue 5, pages 58-63.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil R. Kardos whose telephone number is (571) 270-3443. The examiner can normally be reached on Mon-Thu and alternating Fridays from 7:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dixon can be reached on (571) 272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neil R. Kardos  
Examiner  
Art Unit 4172

nrk  
10/15/07

A handwritten signature in black ink, appearing to read 'Naeem Haq', with a stylized flourish extending to the right.

**NAEEM HAQ  
PRIMARY EXAMINER**